

STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR LUKE H. BRITT

Indiana Government Center South 402 West Washington Street, Room W470 Indianapolis, Indiana 46204-2745 Telephone: (317)233-9435 Fax: (317)233-3091

1-800-228-6013 www.IN.gov/pac

July 9, 2015

Jerome Binkley New Castle Correctional Facility 1000 Van Nuys Road P.O. Box A New Castle, IN 47362

Re: Formal Complaint 15-FC-173; Alleged Violation of the Access to Public Records Act by the Indiana Ombudsman Bureau

Dear Mr. Binkley,

This advisory opinion is in response to your formal complaint alleging the Indiana Ombudsman Bureau ("Bureau") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on May 29, 2015.

BACKGROUND

Your complaint dated May 10, 2015 alleges the Indiana Ombudsman Bureau violated the Access to Public Records Act by failing to provide the records you requested.

On January 25, 2014, you requested any files related to you from the Bureau for a certain timeframe. That timeframe, however, sought documents from the future (1/25/15-1/16/16) that would not have existed at the time of your request. It is unclear whether this was a mistake.

On July 9, 2014, you received a disposition letter from the Bureau addressing your appeal. It indeed referenced the existence of a file.

On February 5, 2015, however, you received a letter from the Bureau ostensibly acknowledging the January 2014 request and rightfully saying no files exist because the timeframe you requested was in the future.



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On April 11, you "resubmitted" your request seeking the file indicated in the Ombudsman's July 2014 letter. As of the writing of this complaint, you have received no response.

ANALYSIS AND RECOMMENDATIONS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." See Ind. Code § 5-14-3-1. The Indiana Ombudsman Bureau is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Bureau's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

Simply put, the confusion in this matter was caused by your initial public records request seeking future records. It cannot be denied these records do not yet exist. With the benefit of hindsight, I can reasonably presume you just want your existing file. Apparently there is one according to the July 9, 2014 letter from the Ombudsman. To the extent it exists, I encourage the Bureau to send you that file as soon as possible.

Regards,

Luke H. Britt Public Access Counselor

Cc: Charlene Burkett